

STATE OF SOUTH DAKOTA  
BOARD OF MEDICAL AND OSTEOPATHIC EXAMINERS

IN THE MATTER OF:	)	
	)	FINDINGS OF FACT AND
THE PROCEDURE REFERRED TO AS	)	CONCLUSIONS OF LAW AND DECLARATORY
<u>MICROBLADING</u>	)	RULING

This matter, having come before the South Dakota Board of Medical and Osteopathic Examiners (the Board) pursuant to SDCL 1-26-15 and ARSD ch. 20:78:02, and a petition from the staff of the Board requesting a declaratory ruling, dated February 10, 2017, regarding the procedure known as *microblading* pursuant to SDCL 36-2-2, 36-4-8, 36-4-8.1, 36-4-9, 36-4-34:

ISSUE

The staff of the Board received calls and complaints concerning the procedure of microblading and the use of a scalpel to apply permanent cosmetics. The precise inquiry is, “does microblading using a scalpel fall within the practice of medicine”.

FINDINGS OF FACT

1. SDCL 36-4-9 defines the “practice of medicine or osteopathy” as recommending, prescribing, or directing the use of any drug, medicine, apparatus, or other agency for the cure, relief or palliation of any ailment or disease of the mind or body or the cure or relief of any wound, fracture or bodily injury or deformity.
2. No person may engage in, offer, or hold him or herself out as qualified to provide diagnosis or treatment of any human illnesses unless that person possesses a legal and unrevoked license or certificate issued under the laws of South Dakota authorizing such person to practice the healing arts. SDCL 36-2-2.

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3. No person may practice medicine or osteopathy without a license issued under SDCL ch. 36-4. SDCL 36-4-11.
4. Surgery constituting the practice of medicine includes the use of a laser or ionizing radiation for the purpose of cutting or otherwise altering human tissue for diagnostic, palliative, or therapeutic purposes SDCL 36-4-8.2.
5. The professions where licensed professionals are authorized to perform some degree of surgery are: Physicians (SDCL 36-4-8,-8.2,-9), Physician Assistants (SDCL 36-4A-22), Dentists (SDCL 36-6A-31), Podiatrists (SDCL 36-8-1), and Certified Nurse Practitioners and Certified Nurse Midwives (SDCL 36-9A-12,13). This is not an exclusive listing and does include licensees referred to in SDCL Title 36, 36-2-1 and 36-2-2.
6. *Microblading* is most similar to tattooing with the use of needles and pigment implanted under the skin. Tattooing is regulated pursuant to SDCL 9-34-17 which states: Any municipality may regulate the practice of tattooing and body piercing by licensing tattoo artists and practitioners of body piercing, inspecting tattoo and body piercing establishments, and establishing standards for sanitation that are at least as stringent as those adopted by the Department of Health pursuant to § 34-1-17. The term "tattoo" means to make permanent marks or designs on the skin by puncturing it and inserting indelible colors. The term "body piercing" means to place a permanent or temporary foreign object in a person's body such as ears, nose, lips, genitals, nipples, or parts thereof for a decorative or other nonmedical purpose by a person not directly under the supervision of a licensed physician as defined by § 36-4-11.

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7. Tattooing a minor without parental consent is a misdemeanor, and includes *microblading*.
8. *Microblading* is tattooing with the use of needles and pigment inserted under the skin, and the results of the procedure last from 12 to 18 months. Tattooing is regulated pursuant to SDCL 9-34-17.
9. A tattoo and *microblading* have all the same characteristics.
10. A tattoo may not be removed because the ink is placed within the skin and prevents the removal by the environment or normal hygiene.
11. The definition in the statute defines the term "tattoo" as making permanent marks or designs on the skin by puncturing it and inserting indelible colors. The definition fits *microblading* and is consistent with the permanence of the tattoo.
12. *Microblading* involves the puncturing of the skin and inserting indelible colors under the skin which prevents removal by the environment or normal hygiene.

CONCLUSIONS OF LAW

1. The South Dakota Board of Medical and Osteopathic Examiners has the authority under SDCL ch. 36-4, SDCL 1-26-15, and ARSD ch. 20:78:02, to issue declaratory rulings concerning the applicability of their statutory and regulatory provisions and the practice of medicine in the State of South Dakota.
2. The use of a scalpel for the purpose of cutting or otherwise altering human tissue for diagnostic, palliative, or therapeutic purposes is the practice of medicine.

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*Microblading* performed with a scalpel or blade is included in SDCL 36-2-1(6), 36-2-2, 36-4-8, 36-4-8.1, 36-4-9, and 36-4-34, and would be the practice of medicine which would require a license authorizing the professional to perform surgery as part of their scope.

3. *Microblading* is tattooing using needles to implant pigment under the skin, and pursuant to SDCL 9-34-17, along with the Department of Health Rules 44:12, is not the practice of medicine.

4. *Microblading* done with a scalpel or blade is included under the definition of the practice of medicine and is under the Board authority.

Dated and signed this \_\_\_\_ day of \_\_\_\_\_, 2017.

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South Dakota Board of Medical &  
Osteopathic Examiners